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October 15, 1997

**RECEIVED**

OCT 15 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: IB Docket No. 97-142  
Notice of Ex Parte Presentation

Dear Mr. Caton:

The undersigned counsel for SITA (Société Internationale de Télécommunications Aéronautiques) hereby notifies the Commission, pursuant to Section 1.1206 of the Commission's Rules, that he and Randall Cook met this afternoon with members of the International Bureau with regard to the above captioned proceeding. Attending the meeting on behalf of the Commission were Regina Keeney, Laura Sherman, Roger Noel, Douglas Klein, and Derek Khlopian.

A copy of the presentation materials discussed at the meeting is attached. An original and one copy of this notice are being submitted to the Secretary's Office for inclusion in the record. In addition, copies are being furnished to the Commission personnel who attended the meeting.

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Mr. William F. Caton  
April 14, 1997  
Page 2

If you have any questions with regard to this matter, please direct them to the undersigned counsel for SITA.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Halprin', with a stylized flourish at the end.

Albert Halprin  
Counsel for SITA

Attachment

cc: Regina Keeney  
Laura Sherman  
Roger Noel  
Douglas Klein  
Derek Khlopian

# **Implementing U.S. WTO Commitments for Aeronautical Enroute Services**

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**Presentation to  
FCC International Bureau  
October 15, 1997**

Albert Halprin  
Halprin, Temple, Goodman & Sugrue  
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*The WTO Basic Telecommunications Agreement is a tremendous historical accomplishment that is the direct result of the visionary leadership of the United States and FCC.*

*The Agreement has enormous potential  
benefits for both public and private  
sectors.*

*The Agreement seeks to provide greater opportunities worldwide by removing market access restrictions and ensuring national treatment of basic telecommunications services.*

# **Agreement Commitments**

- U.S. commitments apply to all basic telecommunications (except DTH, DBS, and DARS)
  - USTR confirms that U.S. is “committed to provide most favored nation, market access and national treatment to service suppliers from WTO members in the provision of all types of basic telecommunications” (except DTH, DBS, and DARS)

# **Agreement Commitments**

- Commitments apply to public and private services
  - Other countries' commitments expressly cover both public and private services
  - Goal of negotiations was to include both public and private services, broadest scope of basic services possible



# **Agreement Commitments**

- Limiting U.S. commitments to public services would create giant loophole, unraveling the scope and effectiveness of the Agreement
  - Many existing and future services would fall outside scope of the Agreement because they are not “offered to the public generally”
  - Other countries are sure to follow FCC’s approach to limit their own commitments
  - Carrier’s carrier model could easily be adopted to maintain other countries’ national monopolies (e.g. Teleglobe (Canada), Cellnet and Vodafone (U.K.) do not offer service to the public generally)

# **Aeronautical Enroute Services**

- Aeronautical enroute services are basic services covered by the Agreement
  - Service provides basic voice and data transmissions without altering the content of such transmissions
  - Services do not use underlying common carrier services and therefore are not enhanced services
  - European Union has specifically stated that aeronautical services are covered

# **WTO Obligations**

- Two current FCC rules governing aeronautical enroute services are inconsistent with WTO obligations
  - Restrictions on indirect foreign ownership
  - Monopoly in the U.S. created by the “one station licensee per location” restriction

# **Restrictions on Indirect Foreign Ownership**

- Violation of U.S. WTO pledge to allow such ownership of U.S. basic telecommunications licensees, including mobile service licensees
  - FCC proposed to allow 100% indirect foreign ownership in common carrier radio licenses by WTO member investors
  - NPRM has not proposed to remove indirect foreign ownership restrictions for aeronautical enroute licenses, instead proposing an *ad hoc* approach for aeronautical services

# **Restrictions on Indirect Foreign Ownership (cont'd)**

- FCC should eliminate restrictions on indirect foreign investment for aeronautical enroute licenses at the same time and to the same extent as for other basic services to comply with its market access obligations
  - A difference in treatment between basic services is unnecessary and unjustified
- Furthermore, an *ad hoc* approach is inconsistent with WTO requirements for transparent, objective, and impartial regulation

# **Retaining the Monopoly**

- WTO obligations also require removal of FCC's "one station licensee per location" rule that grants a monopoly in U.S. aeronautical services
  - Current rule maintains one of the last FCC-created monopolies and is an anachronism
  - Competition in aeronautical services exists in other countries, including U.K., Mexico, and Canada
  - U.S. monopoly provider is aggressively entering foreign markets, including Switzerland, where SITA is headquartered, while urging continued government protection from competition at home
  - Monopoly is not justified on spectrum scarcity grounds

# **Retaining the Monopoly**

## **(cont'd)**

- Rule is contrary to WTO market access provisions against members limiting “the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers”
- Rule is also contrary to WTO national treatment obligations which prohibit a member from treating another member’s service suppliers less favorably than its own service suppliers

# **Removing the Monopoly**

- Unless the one station licensee per location rule is removed , elimination of the indirect foreign ownership restriction would be effectively meaningless
  - U.S. has consistently opposed seemingly “neutral” restrictions that create regulatory monopolies in foreign countries
  - Failure to remove restriction in favor of competition would be viewed as U.S. avoidance of obligations and an invitation to other countries to avoid their commitments



# **Public Interest**

- The public interest will be served by introducing competition
  - Compliance will bring increasing efficiency, better management, new innovations, and more consumer choice
  - Public safety will be enhanced and national security will be protected by greater infrastructure and redundant networks

# **Setting the Tone**

- FCC's WTO implementation will set the tone and have a major impact in determining the value and significance of the WTO agreement
  - Other nations are watching the U.S. example closely: the U.S. should continue to play an effective leadership role
  - Perceived “pulling back” by U.S. will likely trigger similar actions by other countries, ultimately diminishing scope and impact of Agreement, and harming U.S. carriers abroad
  - Restrictions on aeronautical services are inconsistent with the U.S.'s pro-competitive example and its policy of opening markets, as well as its WTO commitments

# **Requested Action**

- In order effectively to implement the U.S. WTO obligations, FCC should:
  - Permit 100% indirect foreign ownership in aeronautical enroute services as it proposes for other basic services
  - Remove the “one station licensee per location” restriction